

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>		EFFECTIVE DATE 06/25/12	NUMBER 03.01.135
SUBJECT DISCHARGE/TERMINATION OF SENTENCE		SUPERSEDES 03.01.135 (06/22/09)	
		AUTHORITY MCL 791.203, 791.234, 791.237, 791.242, 800.33	
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#### **POLICY STATEMENT:**

Prisoners and parolees shall be discharged from Department custody and supervision, and have their sentences terminated, as set forth in this policy.

#### **RELATED POLICY:**

03.01.120 Detainers, Pending Felony Charges, and Felony Suspect Information

#### **POLICY:**

#### GENERAL INFORMATION

- A. For purposes of this policy, an offender's discharge date is his/her controlling maximum sentence less applicable credits.
- B. This policy does not apply to discharge from probation. Probationers shall be discharged from probation only by court order. The supervising agent shall recommend to the court that the probationer be successfully discharged from probation when s/he has complied with all rules and conditions of probation. The supervising agent may recommend an early discharge in accordance with procedures issued by the Deputy Director of Field Operations Administration (FOA).

#### DISCHARGE OF PRISONERS

- C. Each Warden shall ensure prisoners under his/her supervision, including those temporarily housed in the Center for Forensic Psychiatry or another non-Department facility (e.g., jail, hospital), are not incarcerated by the Department beyond their discharge dates except as authorized pursuant to Paragraph H. The Correctional Facilities Administration (CFA) Deputy Director or designee shall be responsible for prisoners who are transferred to another jurisdiction to serve their Michigan sentence.
- D. A Sentence Discharge Report (CB-402) shall be issued to the appropriate Record Office Supervisors on a monthly basis identifying those prisoners who are approximately three months from their potential discharge dates. For each prisoner identified in the report, the appropriate Record Office Supervisor shall ensure that the necessary reviews of special good time and/or disciplinary credits have been conducted in accordance with PD 03.01.100 "Good Time Credits" and PD 03.01.101 "Disciplinary Credits". Questions regarding discharge dates or time calculations shall be referred to the Records Administrator in the Central Records Section of the Operations Division, CFA.
- E. The Central Time Computation Unit (CTCU) of the Central Records Section shall generate a monthly report to identify all prisoners who are approximately three months from their potential discharge dates. For each prisoner identified, the CTCU shall verify that the prisoner's discharge date has been correctly calculated. A new Time Review & Disposition form (CSX-482) shall be completed by the CTCU and forwarded to the appropriate Records Office Supervisor if there is a change in the prisoner's discharge date. All changes shall be entered into the Department's computerized database by the CTCU.
- F. Prior to a prisoner's discharge, a Certificate of Discharge/Sentence Termination/Sentence Discharge by Court Order (CSJ-130) shall be issued by the appropriate Warden. For prisoners temporarily housed in

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the Center for Forensic Psychiatry or another non-Department facility, the Warden of the sending facility or designee shall provide notification to that facility of the prisoner's discharge date at least 30 calendar days prior to that date; the Warden shall ensure the signed certificate is forwarded to the facility prior to the discharge date with notification that the prisoner must be released on that date, unless s/he is being held for another reason or as authorized pursuant to Paragraph H. For prisoners serving their sentences in another jurisdiction, the Certificate shall be completed by the CTCU Manager or designee and signed by the Records Administrator.

- G. The appropriate Record Office Supervisor shall ensure that the prisoner's Record Office or Central Office file, the Department's computerized database, and LEIN are checked to determine whether there are any documented immigration detainers, felony or misdemeanor detainers, pending felony or misdemeanor charges or warrants, felony suspect information, or personal protection orders (PPOs), including child abuse prevention orders, filed on the prisoner. This shall occur approximately 30 calendar days and, except as set forth in Paragraph O, no more than 24 hours prior to the prisoner's discharge date. The Record Office or Central Office file and the computerized database also shall be checked no more than 24 hours prior to the discharge date to ensure there have been no changes in the date.
- H. If an immigration detainer is found, the appropriate Record Office Supervisor or designee shall immediately notify Immigration and Customs Enforcement (ICE) of the prisoner's discharge date. The prisoner shall be held for up to an additional 48 hours after the discharge date if requested by ICE; weekends and federal holidays are not counted. The Record Office Supervisor or designee shall ensure that the request and release date is documented in writing in both the prisoner's Record Office and Central Office files.
- I. If a non-immigration detainer, pending charge or warrant, or felony suspect information is found, the appropriate Record Office Supervisor or designee shall immediately notify the appropriate law enforcement agency that the Department must release the prisoner on the discharge date regardless of the existence of a warrant or the inability of the agency to timely execute a detainer. If timely arrangements are made by the agency which has a detainer or pending warrant, the prisoner shall be released on the discharge date as arranged by that agency.
- J. If a PPO, including a child abuse prevention order, is found, and the address and/or telephone number of the person who obtained the PPO was included with the information on the PPO, the Record Office Supervisor or designee shall immediately provide that information to the Crime Victim Services Section in the Office of the Parole Board; that Section shall attempt to notify that person of the prisoner's discharge date in writing, if only the address is identified, and by telephone, if the telephone number is identified, unless notification was requested and will be provided pursuant to PD 01.06.120 "Victim Notification". The Record Office Supervisor or designee also shall immediately notify the appropriate law enforcement agency via LEIN of the prisoner's discharge date and the existence of the PPO and, unless notification will be provided pursuant to PD 01.06.120, request that agency to also notify the person who obtained the PPO of the discharge date. All attempts to contact the person who obtained the PPO and contacts with law enforcement shall be documented in the prisoner's Central Office and Record Office file, as appropriate, and in OMNI case notes.
- K. Pursuant to MCL 791.233d, a prisoner shall not be discharged unless s/he has provided a DNA sample. The prisoner's consent to take the sample is not required. The Warden shall ensure that the prisoner is referred to appropriate health care staff to collect the sample unless a valid sample was previously provided, as indicated on LEIN. The sample shall be collected by health care staff or other trained staff designated by the CFA Deputy Director. A DNA Sample - Collection Record (CHJ-269) shall be completed indicating the prisoner's compliance with or refusal to provide the sample. If a prisoner refuses to allow health care staff to collect the sample, the Warden shall ensure custody staff are available to assist in collecting the sample. Only reasonable force consistent with the requirements set forth in PD 04.05.110 "Use of Force" is to be used to collect the sample. The Warden shall ensure that the Records Administrator is notified whenever there is a need to use force to collect a sample; the Records Administrator shall notify the Michigan State Police.

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- L. Wardens also shall ensure that each prisoner has been tested for HIV and Hepatitis C (HCV) prior to discharge as required under PD 03.04.120 "Control of Communicable Bloodborne Diseases". If the prisoner refuses to be tested, the appropriate health care staff shall notify the Administrator of the Bureau of Health Care Services (BHCS) through the appropriate chain of command. The BHCS Administrator shall consult with the CFA Deputy Director and the Administrator of the Office of Legal Affairs for direction on how to proceed.
- M. If a mentally ill prisoner may require continuing institutional care or other mental health service upon discharge, the case shall be referred to the Bureau of Forensic Mental Health Services, Department of Community Health. Referrals shall be initiated sufficiently prior to the prisoner's discharge date to ensure that arrangements can be completed by the discharge date.
- N. If a prisoner with mental retardation or other disability may be unable to care for himself/herself, the Warden or designee shall contact appropriate officials in the Department of Human Services or local welfare authorities in the area to which the prisoner is to be released. Referrals shall be initiated sufficiently prior to the prisoner's discharge date to ensure that arrangements can be completed by the discharge date.
- O. A prisoner whose discharge date is on a Saturday, Sunday, or State holiday shall be released on that day except as set forth in Paragraph H; the prisoner shall not be held until the next business day and shall not be released early. The Warden shall ensure that a weekend or holiday discharge is handled in accordance with this policy. Any necessary paperwork, file checks, and issuance of funds and clothing may be completed on the business day immediately preceding the discharge date; however, required LEIN checks shall be conducted no more than 24 hours prior to the discharge date.
- P. Prior to release, each prisoner shall read or have read to him/her the Prisoner Pre-Release Notice (CSJ-290), which shall be signed by the prisoner and witnessed by staff. A copy of the completed notice shall be provided to the prisoner.
- Q. Except if discharging to the custody of another agency, a prisoner shall be given the following upon release:
  - 1. Clothing as required by PD 04.07.110 "State-Issued Items and Cell/Room Furnishings".
  - 2. A total of \$75 if the prisoner has no other visible means of support (e.g., a job) and has conserved personal funds in a reasonable manner, as determined by the Warden or designee. However, a prisoner shall be given only the balance in his/her trust account and the difference between that amount and \$75 consistent with requirements set forth in PD 04.02.105 "Prisoner Funds".
  - 3. If the prisoner is unable to arrange transportation, the Warden or designee shall arrange transportation at Department expense to a location as close as possible to the place in this state where the prisoner will reside or work or where s/he was convicted or sentenced. If it is verified, however, that the prisoner will reside outside the State of Michigan, the Warden or designee may arrange transportation at Department expense to a location as close as possible to that residence with approval of the appropriate Deputy Director. Transportation shall be via the most economical public transportation available to the location. The Warden shall ensure that the appropriate ticket(s) are purchased for the prisoner, that staff escort the prisoner to the point of embarkation, and that the prisoner's departure from that site is confirmed.
- R. Prisoners registered pursuant to the Sex Offenders Registration Act (MCL 28.271, et seq.) shall be notified of their responsibilities under that Act prior to release from a correctional facility as set forth in PD 01.06.115 "Sex Offenders Registration Act". The prisoner's proposed place of residence or domicile upon release shall be reported in accordance with PD 01.06.115.

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- S. The appropriate Record Office Supervisor shall ensure that the Discharge Processing Checklist (CSJ-170) is completed for each prisoner prior to the discharge date.

Discharge by Court Order

- T. If a prisoner's conviction is overturned and his/her release is specifically ordered by the court, the prisoner shall be discharged upon receipt of the court order provided the prisoner is not serving on another sentence. A prisoner shall not be discharged based only on a court opinion. The court order must be received directly from the court and be verified with the court by the Records Administrator or designee prior to releasing the prisoner. If only a faxed order is received from the court, the Records Administrator or designee shall request the court to send an original or true copy of the order in the mail. The prisoner's discharge shall be processed consistent with the requirements set forth in this policy except that required file, computerized database, and LEIN checks need only be conducted once. If the prisoner is serving his/her sentence in another jurisdiction, the Certificate of Discharge/Sentence Termination/Sentence Discharge by Court Order shall be issued by the Records Administrator or designee.

Discharge While on Escape or Due to Death

- U. A prisoner who has escaped and remains at large may be considered for an administrative discharge if s/he has attained the age of 80 years and there has been no report concerning his/her whereabouts, or any other indication that the prisoner is still alive, for the preceding five years. A LEIN verification shall be completed prior to considering discharge. In such cases, a Certificate of Discharge/Sentence Termination/Sentence Discharge by Court Order shall be completed by the appropriate Warden and forwarded through the chain of command to the CFA Deputy Director for final approval. However, if the prisoner escaped from another jurisdiction to which the prisoner was transferred to serve his/her Michigan sentence, the certificate shall be completed by the Records Administrator or designee and forwarded to the CFA Deputy Director for final approval. If discharge is approved by the Deputy Director, the Warden shall ensure the Electronic Monitoring Center, FOA, is notified of the need to remove the escape warrant from LEIN, in accordance with PD 01.05.125 "Escape and Apprehension Reporting/Processing".
- V. If a prisoner dies while serving his/her sentence, a Certificate of Discharge/Sentence Termination/Sentence Discharge by Court Order shall be issued by the appropriate Warden. However, if the prisoner dies while serving his/her Michigan sentence in another jurisdiction, the certificate shall be issued by the Records Administrator or designee.

Release Notification

- W. Whenever a prisoner is discharged, the appropriate Record Office Supervisor shall ensure that notice of the discharge is transmitted via LEIN to the Sheriff's Department and Michigan State Police post with jurisdiction over the location to which the prisoner is to be released or, if unknown, the county or counties from which the prisoner was sentenced. The notice shall include information as to whether the prisoner has a history of assaultiveness or is a sex offender. If a registered sex offender is being discharged, staff shall report the offender's new address to the Michigan State Police under the circumstances required in PD 01.06.115 "Sex Offenders Registration Act".
- X. Notice of the discharge shall be provided to victims and other persons who have requested to receive such notice as set forth in PD 01.06.120 "Victim Notification".

DISCHARGE OF PAROLEES

- Y. A Parole Board Order for Discharge from Sentence (CAX-115) shall be issued when a parolee has satisfactorily complied with all conditions and requirements of his/her parole and has successfully completed the parole period ordered by the Parole Board.

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- Z. Whenever a parolee is scheduled to discharge from parole prior to completion of his/her controlling maximum sentence less applicable credits, the Manager of the Parole Supervision and Discharge Unit, Field Services Section, FOA, shall ensure that the Department's computerized database and LEIN are checked approximately 30 calendar days prior to the scheduled discharge date to determine whether there are any documented detainers, pending felony or misdemeanor charges or warrants, felony suspect information, or PPOs, including child abuse prevention orders, filed against the parolee.
- AA. The Manager of the Parole Supervision and Discharge Unit also shall ensure that the computerized database and LEIN checks identified in Paragraph Z are completed no more than 24 hours prior to the parolee's scheduled discharge date. At that time, the parolee's Central Office file also shall be reviewed for the same information; however, if the discharge date is on a Saturday, Sunday, or holiday, the file check may be completed on the immediately preceding business day.
- BB. The Parole Board shall be notified immediately whenever a parolee who is scheduled to discharge from parole prior to completion of his/her controlling maximum sentence less applicable credits is known to have any of the following filed against him/her during the parole period:
1. Felony suspect information.
  2. Pending felony charge or warrant.
  3. Pending charge or warrant for an assaultive misdemeanor, a violation of MCL 257.625, or a misdemeanor that requires registration under the Sex Offenders Registration Act.
  4. A PPO, including a child abuse prevention order.
  5. An active order of probation issued by a state or federal court for any criminal offense that was committed during the parole period.
- CC. Whenever a case is referred to the Parole Board pursuant to Paragraph BB, the Parole Board shall determine whether the parolee will be discharged as scheduled or if the parole period will be extended; however, a parolee may not be held under Department supervision beyond his/her controlling maximum sentence less applicable credits under any circumstances. The supervising agent shall be informed in writing of the Parole Board's determination. If the Parole Board determines that the parolee is to be discharged as scheduled, the supervising agent shall be provided specific written authorization to deliver the Parole Board Order for Discharge from Sentence to the parolee; the Parole Board Order for Discharge from Sentence shall not be delivered until after this authorization is received. If the parole period is to be extended, the Parole Board Order for Discharge from Sentence shall be canceled and the parolee notified of the parole extension.
- DD. Whenever a parolee who has been ordered to pay restitution as a condition of parole is scheduled to discharge from parole, the supervising field agent shall determine not less than 60 calendar days prior to the scheduled discharge date whether the parolee was paying restitution as ordered. If it is determined that restitution was not being paid as ordered, the agent shall notify the Parole Board in writing of the amount not paid and any reason for the non-payment that is known by the agent. The Parole Board shall provide this information to the sentencing court, the prosecuting attorney, and the victim unless the parole period is extended.

Discharge Prior to Expiration of Original Parole Period

- EE. Parole supervision is a means by which to determine a parolee's readiness to adopt a productive, non-criminal lifestyle; therefore, a parolee who shows evidence of this successful transition shall be considered for discharge prior to expiration of the original parole period ordered by the Parole if all of the following criteria are met:
1. The parolee has served 12 months of a parole period that exceeds 12 months and has

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completed any minimum term of parole required pursuant to PD 06.05.104 "Parole Process".

2. The parolee does not have an active PPO, including a child abuse prevention order, which was filed against him/her during the parole period.
3. The parolee is not known to have been involved in and is not currently suspected of felonious behavior, assaultive misdemeanor behavior, a violation of MCL 257.625, or an offense that requires registration under the Sex Offenders Registration Act while on parole.
4. The parolee is not serving for an offense for which s/he is required to be registered under the Sex Offenders Registration Act.
5. The parolee is not on any other federal probation supervision or any state felony probation supervision for a criminal offense that was committed during the current parole period.
6. Any other criteria established in writing by the FOA Deputy Director or designee.

- FF. Whenever the supervising agent recommends that a parolee who meets all of the criteria identified in Paragraph EE should be discharged prior to the expiration of the original parole period, the agent shall submit a Parole Action Request (CFJ-424) setting forth the basis for his/her recommendation to the Parole Board for a final determination.

#### Discharge by Court Order

- GG. If a parolee's conviction is overturned and his/her release is specifically ordered by the court, the parolee shall be discharged upon receipt of the court order provided the parolee is not serving on any other sentence. A parolee shall not be discharged based only on a court opinion. The court order must be received directly from the court and be verified with the court by the Records Administrator or designee prior to discharging the parolee. If only a faxed order is received from the court, the Records Administrator or designee shall request the court to send an original or true copy of the order in the mail.

#### Discharge of Absconder or Due to Death

- HH. A parolee who has absconded from parole and remains at large may be considered for administrative discharge if s/he has attained the age of 80 years and there has been no report concerning his/her whereabouts, or any other indication that the parolee is still alive, for the preceding five years. A LEIN verification shall be completed prior to considering discharge. All such cases shall be referred through the chain of command to the FOA Deputy Director for final approval. If the discharge is approved by the Deputy Director, the Parole Board Chair shall ensure a Parole Board Order for Discharge from Sentence is issued. The Administrator of the Office of the Parole Board shall ensure the Electronic Monitoring Center, FOA, is notified of the need to remove the escape warrant from LEIN in accordance with PD 01.05.125 "Escape and Apprehension Reporting/Processing".
- II. If a parolee dies while on parole, a Certificate of Discharge/Sentence Termination/Sentence Discharge by Court Order shall be issued by the Parole Board Chair when documentation has been presented that sufficiently identifies the parolee as being deceased.

#### TERMINATION OF NON-CONTROLLING SENTENCES

- JJ. The CTCU shall be responsible for the termination of non-controlling sentences. Whenever a sentence is terminated, a Certificate of Discharge/Sentence Termination/Sentence Discharge by Court Order shall be issued by the Records Administrator or designee.
- KK. If an offender is serving concurrent sentences, each non-controlling sentence shall be terminated upon completion of the maximum sentence less applicable regular good time or disciplinary credits which

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could be earned, even if the offender is not eligible for discharge.

- LL. Except as set forth in Paragraph MM, if an offender is serving consecutive sentences, none of the sentences which are part of the consecutive string shall be terminated until all sentences in that string have been served. If an offender is serving two or more consecutive strings, consecutive sentences in the non-controlling strings shall be terminated upon completion of the appropriate maximum sentence, less applicable credits which could be earned. However, if a sentence is consecutive to more than one consecutive string, that sentence shall remain active until the controlling string has been served, even though the other sentences in the non-controlling strings are terminated.
- MM. If an offender is serving a sentence that precedes a consecutive escape sentence for a violation of MCL 750.193 ("Prison Escape"), the preceding sentence is to be terminated when the offender has completed serving the maximum sentence imposed, plus any dead time, instead of waiting to terminate it until the offender has discharged on the escape consecutive string. The terminated sentence shall be considered inactive and treated the same as any other terminated sentence, except that good time/disciplinary credits earned on the sentence can and will continue to be subject to disciplinary time.

#### PROCEDURES

- NN. Wardens and the CFA and FOA Deputy Directors shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive. Procedures shall be completed within 60 calendar days after the effective date of this policy directive. This includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Procedures shall not conflict with operating procedures issued by the Director.

#### AUDIT ELEMENTS

- OO. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: DHH 06/07/12